

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA for)
the Use and Benefit of WEBCOR)
CONSTRUCTION, INC., dba)
Webcor Builders,)
Plaintiff(s),)
v.)
DICK/MORGANTI, et al.,)
Defendant(s).)

) No. C07-2564 CRB (BZ)
ORDER SCHEDULING
SETTLEMENT CONFERENCE

The above matter was referred to Magistrate Judge Bernard Zimmerman.

You are hereby notified that a settlement conference is scheduled for **Friday, March 27, 2009, at 9:00 a.m.**, in Courtroom G, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

It is the responsibility of counsel to ensure that whatever discovery is needed for all sides to evaluate the case for

1 settlement purposes is completed by the date of the settlement
2 conference. Counsel shall cooperate in providing discovery
3 informally and expeditiously.

4 Lead trial counsel shall appear at the Settlement
5 Conference with the parties. Any party who is not a natural
6 person shall be represented by the person or persons **not**
7 **directly involved** in the events which gave rise to the
8 litigation but with **full** authority to negotiate a settlement. A
9 person who needs to call another person not present before
10 accepting, rejecting or making any settlement offer does not
11 have full authority. An insured party shall appear with a
12 representative of the carrier with full authority to negotiate
13 up to the limits of coverage. The Court shall be notified
14 immediately if the carrier declines to attend. Personal
15 attendance of a party representative will rarely be excused by
16 the Court, and then only upon separate written application
17 demonstrating substantial hardship served on opposing counsel
18 and lodged as early as the basis for the hardship is known.

19 Each party shall prepare a Settlement Conference Statement,
20 which must be served on opposing counsel and lodged (not faxed)
21 with my chambers no later than **March 24, 2009**. The Statement
22 shall **not** be filed with the Clerk of the Court. The Statement
23 **may** be submitted on CD-ROM with hypertext links to exhibits.
24 Otherwise, the portion of exhibits on which the party relies
25 **shall** be highlighted. The Settlement Conference Statement shall
26 not exceed ten pages of text and twenty pages of exhibits and
27 shall include the following:

28 1. A brief statement of the facts of the case.

1 2. A brief statement of the claims and defenses
2 including, but not limited to, statutory or other grounds upon
3 which the claims are founded.

4 3. A summary of the proceedings to date and any pending
5 motions.

6 4. An estimate of the cost and time to be expended for
7 further discovery, pretrial and trial.

8 5. For any party seeking relief, a description of the
9 relief sought, including an itemization of damages.

10 6. The parties' position on settlement, including present
11 demands and offers and a history of past settlement discussions.
12 The Court's time can best be used to assist the parties in
13 completing their negotiations, not in starting them.

14 Accordingly, plaintiff must serve a demand in writing no later
15 than **March 17, 2009** and defendant must respond in writing no
16 later than **March 20, 2009**. If plaintiff seeks attorney's fees
17 and costs, plaintiff's counsel shall either include the fee
18 claim in the demand or make a separate, simultaneous demand for
19 fees and costs. Counsel shall be prepared at the conference to
20 provide sufficient information to defendant to enable the fee
21 claim to be evaluated for purposes of settlement. The parties
22 are urged to carefully evaluate their case before taking a
23 settlement position since extreme positions hinder the
24 settlement process.

25 Along with the Statement each party shall lodge with the
26 court a document of no more than three pages containing a **candid**
27 evaluation of the parties' likelihood of prevailing on the
28 claims and defenses, and any other information that party wishes

not to share with opposing counsel. The more candid the parties are, the more productive the conference will be. This document shall not be served on opposing counsel.

It is not unusual for conferences to last three or more hours. Parties are encouraged to participate and frankly discuss their case. Statements they make during the conference will not be admissible at trial in the event the case does not settle. The parties should be prepared to discuss such issues as:

1. Their settlement objectives.
 2. Any impediments to settlement they perceive.
 3. Whether they have enough information to discuss settlement. If not, what additional information is needed.
 4. The possibility of a creative resolution of the dispute.

The parties shall notify Magistrate Judge Zimmerman's chambers immediately if this case settles prior to the date set for settlement conference. Counsel shall provide a copy of this order to each party who will participate in the conference.

Dated: March 12, 2009

Bernard Zimmerman
Bernard Zimmerman
United States Magistrate Judge